FILED
BILLINGS DIV.

2010 NOV 1 PM 12 30

PATRICK E. DUFFY, CLERK

BY _____
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

ANDREW TYLER,)	Cause No. CV 10-111-BLG-RFC-CSO
)	
Petitioner,)	
)	
vs.)	RECOMMENDATION
)	AND ORDER
ATTORNEY GENERAL OF)	
THE STATE OF MONTANA,)	
)	
Respondent.)	

On September 15, 2010, Petitioner Andrew Tyler filed this action for

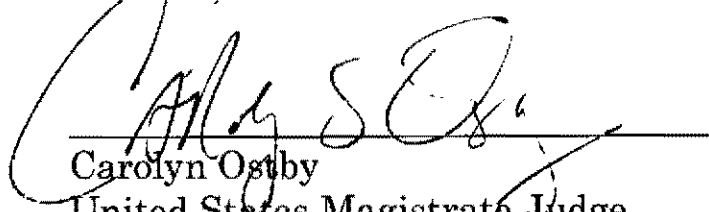writ of habeas corpus under 28 U.S.C. § 2254. Tyler is proceeding pro se.

On September 21, 2010, Tyler was ordered to pay the $5.00 filing fee

for this action or face dismissal. He did not respond to the Order.

Tyler is not entitled to a fourteen-day period to object to dismissal

of this case based on his failure to pay the filing fee. Minetti v. Port of

Seattle, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). This Order will

be entered directly upon endorsement by the District Court.

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RECOMMENDATION

The following Order should be issued by Judge Cebull.

DATED this _1st_ day of November, 2010.
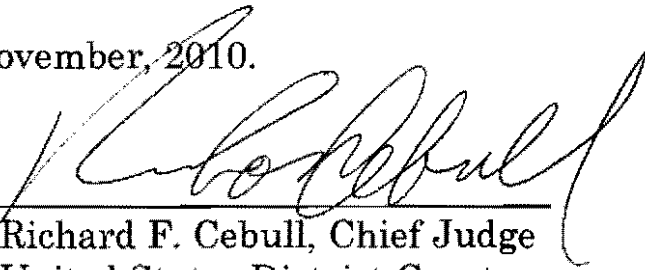
Carolyn Ostby
United States Magistrate Judge

ORDER

1. The Recommendation of Judge Ostby is ADOPTED.

2. Tyler's motion to proceed in forma pauperis (doc. 3) is DENIED.

3. The Petition (doc. 2) is DISMISSED. Any fee received out of time will be returned to Tyler.

4. A certificate of appealability is DENIED because Tyler had notice that he must pay the $5.00 filing fee and an opportunity to respond. He failed to pay or respond to the Order. Reasonable jurists could not disagree that dismissal is appropriate.

5. If Tyler files a notice of appeal and/or moves to proceed in forma pauperis on appeal, the Clerk of Court shall immediately advise the court of appeals, pursuant to Fed. R. App. P. 24(a)(4)(B), that this Court

CERTIFIES the appeal is not taken in good faith for the same reasons a certificate of appealability is denied.

6. No motions for reconsideration or rehearing will be entertained.

DATED this _____ day of November, 2010.

Richard F. Cebull, Chief Judge
United States District Court

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